

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN BANGO,

Plaintiff,

v.

JAMES MAYER and PHILIP M. ANDERSEN &
ASSOCIATES,

Defendants.

No. 10-04822 CW

ORDER GRANTING
APPLICATION TO
PROCEED IN FORMA
PAUPERIS,
DISMISSING
COMPLAINT AND
DENYING REQUEST
TO APPOINT
COUNSEL

Plaintiff John Bango applies for leave to proceed in forma pauperis (IFP) and requests the appointment of counsel. The matter was decided on the papers. Having considered all of the papers filed by Plaintiff, the Court GRANTS the application to proceed IFP and dismisses the complaint.

DISCUSSION

A court may authorize a plaintiff to prosecute an action in federal court without prepayment of fees or security if the plaintiff submits an affidavit showing that he or she is unable to pay such fees or provide such security. See 28 U.S.C. § 1915(a). Plaintiff has submitted the required documentation, and it is evident from his application that his assets and income are insufficient to enable him to prosecute the action. Accordingly,

1 his application to proceed without the payment of the filing fee is
2 GRANTED.

3 The Court's grant of Plaintiff's application to proceed IFP,
4 however, does not mean that he may continue to prosecute his
5 complaint. A court is under a continuing duty to dismiss a case
6 filed without the payment of the filing fee whenever it determines
7 that the action "(i) is frivolous or malicious; (ii) fails to state
8 a claim on which relief may be granted; or (iii) seeks monetary
9 relief against a defendant who is immune from such relief." 28
10 U.S.C. § 1915(e)(2)(B)(i)-(iii). Because a dismissal pursuant to
11 § 1915(e)(2)(B) is not a dismissal on the merits, but rather an
12 exercise of the court's discretion under the IFP statute, the
13 dismissal does not prejudice the filing of a paid complaint making
14 the same allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

15 Plaintiff makes the following allegations. In December, 2006,
16 Plaintiff was permanently injured in an automobile accident caused
17 by Defendant James Mayer. Plaintiff sued Defendant Mayer.
18 Defendant Mayer lied and misled the jury. Defense counsel,
19 presumably Defendant Philip M. Andersen & Associates, told the jury
20 that Plaintiff was a liar, exaggerator and gold digger who pays
21 little taxes as a self-employed handyman. Defense counsel lied to
22 the jury by citing only a portion of the large medical record,
23 knowing the jury would not take the time to check the entire
24 medical record because it was massive. Defense counsel also
25 tricked the jury by showing it twelve photographs of Plaintiff's
26 bumper which did not reveal the damage done by Defendant Mayer;
27 only the thirteenth photograph showed the damage. The expert
28

1 medical expert for the defense lied to the jury when he stated that
2 Plaintiff would not require future medical treatment. Defense
3 lawyers played mind games with Plaintiff's medical expert. The
4 jury decided against Plaintiff.

5 Plaintiff appealed. The appellate court ignored Plaintiff's
6 extensive medical evidence and treated the defense's fabrications
7 as facts. The appellate court failed to address the conspiracy
8 between defense lawyers and their medical witness and suppressed
9 evidence presented by Plaintiff's medical expert. The appellate
10 court improperly concluded that the jury's verdict was supported by
11 substantial evidence and there was no evidence that the jury did
12 anything wrong. Apparently, Plaintiff appealed to the California
13 Supreme Court which also ruled against him.

14 Plaintiff does not specify any causes of action, but states
15 that "the law of injury has to be change [sic]! you get injured --
16 you have to get money for injuries. . . . I am asking Federal Court
17 to overturn 'dirty' verdict from The Supreme Court, and reward for
18 my permanent injuries." Plaintiff seeks \$25,000 for past medical
19 expenses, \$97,500 for future medical expenses, \$585,000 for past
20 and future lost earnings and \$1,500,000 for unlimited pain and
21 suffering.

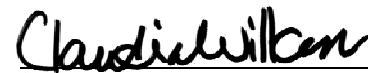
22 A federal district court, as a court of original jurisdiction,
23 has no authority to review the final determinations of a state
24 court in judicial proceedings, even when the challenge alleges that
25 the state court's action was unconstitutional. District of
26 Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983);
27 Rooker v. Fidelity Trust Co., 263 U.S. 413, 415 (1923); Worldwide

1 Church of God v. McNair, 805 F.2d 888, 891 (9th Cir. 1986). Stated
2 somewhat differently, federal district courts may not be utilized
3 as appellate tribunals to review errors allegedly committed by
4 state courts. Turnbow v. Pacific Mut. Life Ins. Co., 934 F.2d
5 1100, 1103 (9th Cir. 1991); Feldman, 460 U.S. at 476; Rooker, 263
6 U.S. at 415. "The rationale behind this doctrine is that the only
7 federal court with the power to hear appeals from state courts is
8 the United States Supreme Court." Bennett v. Yoshina, 140 F.3d
9 1218, 1223 (9th Cir. 1998); see also 28 U.S.C. § 1257. Where the
10 district court cannot evaluate the plaintiff's constitutional
11 claims without conducting a review of the state court's legal
12 determinations, the district court lacks jurisdiction. Worldwide
13 Church, 805 F.2d at 892-893.

14 To adjudicate Plaintiff's claims, this Court would be required
15 to review a judgment of the state court. Under the Rooker-Feldman
16 doctrine, this Court lacks jurisdiction to do so. Therefore, this
17 case is dismissed without leave to amend because amendment would be
18 futile. Plaintiff's request for the appointment of counsel is
19 denied as moot.

20
21 IT IS SO ORDERED.

22
23 Dated: 11/30/2010



CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BANGO et al,

Plaintiff,

v.

MAYER et al,

Defendant.

Case Number: CV10-04822 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 30, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Bango
145 Mullen Avenue
San Francisco, CA 94110

Dated: November 30, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

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For the Northern District of California